

UNITED STATES DISTRICT COURT

**ORIGINAL**

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable YVONNE GONZALEZ ROGERS, Judge

IN RE: SOCIAL MEDIA	)	<b>Further Case Management</b>
ADOLESCENT ADDICTION/	)	
PERSONAL INJURY PRODUCTS	)	
LIABILITY LITIGATION	)	NO. C 22-03047 YGR
	)	
	)	
ALL ACTIONS	)	Pages 1 - 61
	)	
_____	)	Oakland, California
		Wednesday, December 14, 2022

**REPORTER'S TRANSCRIPT OF PROCEEDINGS**

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(Appearances continued next page)

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1 Wednesday, December 14, 2022

8:33 a.m.

2 P R O C E E D I N G S

3 --o0o--

4 **THE COURT:** Let's call the case, and we will not do  
5 all of the lawyers' appearances given that the courtroom is  
6 full.

7 **THE CLERK:** Now calling MDL case 22-3047-YGR, In Re:  
8 Social Media Adolescent Addiction Personal Injury Products  
9 Liability Litigation.

10 **THE COURT:** Okay. As you come up and -- we will put  
11 on the docket the sign-in sheet. So if --

12 Sorry about that.

13 And so if you've not signed in on the sign-in sheet, make  
14 sure to do so because that will be the record of who is here.

15 And then when you come to the microphone, you should  
16 identify yourself.

17 So let's -- who's going to be -- we have a lot to do.  
18 I'll start with the CMC statement and go through the issues  
19 that are there. And I'd like to get the updates that you  
20 indicated in the CMC statement you might have.

21 So who will be speaking? One from each side.

22 **MS. JONES:** Good morning, Your Honor. Phyllis Jones  
23 from Covington & Burling on behalf of Meta. I'll be playing  
24 spokesperson for the defense for the most part today, but  
25 others might get up on specific issues. Nice to see you

1 again.

2 **THE COURT:** Good to see you again.

3 **MS. HAZAM:** Good morning, Your Honor. Lexi Hazam on  
4 behalf of plaintiffs. The same applies. I will address  
5 certain issues, and co-lead counsel will address others.

6 **THE COURT:** Okay.

7 So going to your CMC statement, what updates do you have  
8 in terms of the things that you were considering -- or  
9 continuing to address between the time you filed this on  
10 December 8th and today?

11 We'll start with the plaintiff.

12 **MS. HAZAM:** Thank you, Your Honor.

13 Going in the order of the agenda, although I'm happy to go  
14 in any other order the Court prefers, the parties have agreed  
15 on a schedule for master pleadings and --

16 **THE COURT:** So maybe I wasn't clear. I'm going to go  
17 through the issues. What I want to know before I go through  
18 issues are what updates, that is, what has happened between  
19 December 8th and today that I don't -- that is not reflected  
20 in the statement?

21 **MS. HAZAM:** Your Honor, the parties have continued to  
22 meet and confer on certain issues. Those would include the  
23 issues related to prior productions made by defendants. There  
24 has been some progress made, I believe, although there are  
25 certainly outstanding disputes. And my colleague Previn

1 Warren will speak specifically to that.

2 The parties have also had some discussions about the  
3 proposed common benefit order. Mr. Seeger will speak to that.

4 I believe the other update is that pursuant to what the  
5 parties set out in the statement, a proposed order regarding  
6 guardian ad litem appointments was filed with the Court  
7 yesterday. That is unopposed. And Ms. Anderson will speak  
8 specifically to that.

9 **THE COURT:** Okay.

10 From your side?

11 **MS. JONES:** Your Honor, we -- we agree with those  
12 updates. I think the only other thing I would add to the list  
13 is we have agreed to aim to exchange proposed mediator names  
14 by this Friday, as of a further meet and confer yesterday  
15 amongst counsel.

16 And we have also, I believe, reached an agreement with  
17 respect to aiming to provide each other with comments on the  
18 first drafts of the preservation order that Your Honor asked  
19 the parties to work on, the ESI protocol and the protective  
20 order.

21 **MS. HAZAM:** Your Honor, I would note that there was a  
22 proposal from defendants last night on that. I don't believe  
23 we've formally responded. I don't necessarily anticipate that  
24 we won't reach agreement, however.

25 **MS. JONES:** That's accurate, Your Honor.



1           **THE COURT:** Okay.

2           All right. So then starting at the top. In terms of the  
3           schedule, in general, the schedule works for me.

4           A couple of notes. So the master complaint will be filed  
5           February 14th, 2023. What I indicated to plaintiffs, to be  
6           clear, is that I wanted you to identify to defendants what you  
7           believed were the five or six strongest claims. So that I'm  
8           clear, not just any claims, your strongest claims. And you  
9           should -- you should inform them by way of notice on the  
10          docket so that I know too.

11          I anticipate that -- well, let me say it this way: The  
12          defendants will bring a motion to dismiss on those five or six  
13          claims or they will be waived. Understand?

14          **MS. JONES:** Understood.

15          **THE COURT:** Okay.

16          If you want to bring a claim of -- motion to dismiss on  
17          the 230 and First Amendment, you can, but not in that  
18          document. And you can't do it in that document because I'm  
19          not going to rule on it until I decide to rule on it.

20          So with respect to that -- those two issues, you can bring  
21          a second motion.

22          **MS. JONES:** Well, Your Honor, just -- just to address  
23          your -- your point. I think from our perspective, part of the  
24          thinking around the schedule was for the parties to have an  
25          opportunity to address certain crosscutting issues that might

1 be dispositive as to all of the claims and --

2 **THE COURT:** I am not going to rule on the 230 until I  
3 hear from the Supreme Court.

4 **MS. JONES:** Well, from our perspective, we think that  
5 would be -- that would be fine, Your Honor, but we're -- our  
6 view is that the parties can proceed with briefing the  
7 issue --

8 **THE COURT:** So why is it that want to brief the issue  
9 without hearing from the Supreme Court? You want to brief it  
10 in a vacuum? Wouldn't you prefer to brief it once we hear  
11 from the Supreme Court so you that you can brief it in that  
12 context rather than me asking for supplemental briefing?

13 **MS. JONES:** Your Honor, I don't think we'd be  
14 briefing it in a vacuum because certainly there's existing law  
15 on the topic. And if we get to a point where it's appropriate  
16 for the Court to seek additional briefing from the parties,  
17 that can certainly happen.

18 But I think it's hard for us to make a judgment standing  
19 here today that something's going to happen in the *Gonzalez*  
20 case that would prevent us from being able to brief the issues  
21 fully at this point.

22 **THE COURT:** Well, the other way you can do it is you  
23 can brief it. If I get something from the Supreme Court that  
24 I think moots it, then I'll moot it and I'll have you do it  
25 again if appropriate.

1 I don't want to waste my time. What I've said before and  
2 I'll say it again, the plaintiffs here have a different  
3 approach that has not been tested. That is the approach that  
4 I'm going to spend my time on.

5 **MS. JONES:** We -- we fully understand that, Your  
6 Honor. And -- and in fact, I think it's hard for us standing  
7 here today to know exactly what that approach will be given  
8 what the plaintiffs have said about what they plan to do and  
9 their master complaint and how that might differ from the  
10 complaints that they've filed so far.

11 We think at least as they've described their proposed  
12 alternative approach, it would still be subject to a  
13 Section 230 defense. It would still be subject to a defense  
14 under the First Amendment of the U.S. Constitution.

15 And from our perspective, it's not a -- we certainly  
16 obviously don't want to waste the Court's time. That's not  
17 what we're aiming to do here. But we do think we're in a  
18 position to brief those issues on the schedule that the  
19 parties have agreed to.

20 **MS. HAZAM:** Your Honor --

21 **THE COURT:** Like I said, you can brief them but not  
22 in the same -- in the same motion.

23 Yes.

24 **MS. HAZAM:** Your Honor, we understand the Court is  
25 instructing that the defendants may bring those motions at the

1 same time as part of a separate motion. It's plaintiffs'  
2 position that it would indeed be wasteful of the Court's and  
3 the parties' resources to go forward with briefing of those  
4 motions prior to the Supreme Court's decision, which would  
5 likely be arriving at the time that the initial phase of  
6 motions relating to whether we've adequately alleged a product  
7 become ripe.

8 And we believe it is inevitable, regardless of how the  
9 Supreme Court rules, that the parties will need to redo their  
10 briefing. And we therefore think it makes sense to proceed as  
11 the Court had instructed with these initial phase briefs on  
12 the threshold question of whether we've alleged a product and  
13 defer briefing on Section 230 until the Supreme Court's  
14 ruling.

15 **THE COURT:** Well, I think we're going to expect a  
16 Supreme Court ruling by, you know, the end of June.

17 **MS. HAZAM:** Yes.

18 **THE COURT:** Everything -- the defendants' reply  
19 briefs are due June 30th.

20 Why you couldn't then do, on 35 days' notice, a motion to  
21 dismiss on the 230 and First Amendment, beginning briefing  
22 July 1st, given that I'm not going to make a decision in two  
23 weeks, I just don't understand how that is efficient.

24 **MS. JONES:** Let me ask, if I may, Your Honor, just a  
25 clarifying question about what you're contemplating, and then

1 I want to give Ms. Ring a chance to weigh in on this because  
2 she came prepared to address this specific issue.

3 I think from our perspective, while there's a Section 230  
4 defense still pending and unresolved by the Court, then the  
5 discovery stay that the Court has put in place should stay in  
6 place.

7 If what the Court is contemplating is that discovery would  
8 remain stayed while all this --

9 **THE COURT:** I'm going to allow a measure of  
10 discovery, not full discovery, but a measure.

11 **MS. JONES:** Well, so our position, Your Honor,  
12 respectfully is that while the Section 230 issue is  
13 unresolved, discovery wouldn't be appropriate.

14 **MS. RING:** Your Honor, I don't want to beat a dead  
15 horse here --

16 **THE COURT:** So you need to identify --

17 **MS. RING:** Yes, I apologize.

18 Rose Ring, Gibson Dunn, on behalf of Meta.

19 During the initial CMC, Your Honor mentioned that you'd  
20 had MDLs but never product MDLs. And this is a unique product  
21 MDL, to say the least. Unlike the drug and device cases, we  
22 don't even know if we have a product here --

23 **THE COURT:** Correct.

24 **MS. RING:** Yeah. And --

25 **THE COURT:** And if there is no product, there is no

1 case.

2 MS. RING: Agree. And the nature of the product is  
3 such, Your Honor, these are communications platforms, and we  
4 heard you. Plaintiffs are the masters of their complaint.  
5 They're trying to do something new here.

6 We're not trying to be obtuse when we say we don't know  
7 what this is going to look like. It's based on the current  
8 complaints. And what plaintiffs are now describing, they're  
9 two very different things. But we're waiting -- we're just  
10 waiting and seeing what the master complaint is going to look  
11 like.

12 The reason that, on *Gonzalez*, we don't know whether the  
13 Supreme Court is even going to reach the Section 230 issue.  
14 The briefs that have been filed so far are all over the place  
15 on the issue to actually even be addressed. And the one that  
16 we filed says the Court doesn't even have to reach  
17 Section 230.

18 So just in the interest of the plaintiffs are the master  
19 of their complaint, once we see the master complaint and we  
20 see what plaintiffs' case and theories are going to look like,  
21 we just want a chance to move on it as we would any case.

22 In a situation where it is entirely possible that the  
23 Supreme Court will not even reach the Section 230 question,  
24 and understanding, Your Honor, you don't want to waste your  
25 time, we don't want to waste our time, but we do think the

1 timing here is such that we will have a decision.

2 And if the Supreme Court reaches the issue and if the  
3 Supreme Court changes the law, that can be addressed in  
4 supplemental briefing.

5 But to approach the case holistically and to let us make  
6 our arguments on a motion to dismiss holistically, that's why  
7 we're asking to brief them together. We have no desire or  
8 intent to waste the Court's time.

9 **MS. HAZAM:** Your Honor, if I may respond.

10 We understand the Court to be advising defendants that  
11 they can bring their motions as separate motions on the same  
12 schedule here. So accepting that, the question becomes  
13 whether those motions should then be briefed.

14 In our view, the question presented to the Supreme Court  
15 as defined by the parties in their briefing is squarely a  
16 Section 230 question.

17 I understand that the defendants are pointing out that  
18 there -- within the realm of possibility is the Supreme Court  
19 enters a ruling that does not reach the question presented to  
20 it. However, that seems highly unlikely. It seems quite  
21 likely, overwhelmingly likely in fact, that the court's  
22 decision will inform this Court's analysis and the parties'  
23 analysis of this issue, and therefore it would be wasteful to  
24 engage in full briefing prior to that time, particularly when  
25 it can be accomplished soon after, as the Court just

1 suggested.

2 **THE COURT:** Okay. Again, I've read the statement. I  
3 am not saying you cannot bring it. I am saying that until I  
4 hear from the Supreme Court, one way or the other, I need to  
5 understand the legal landscape.

6 Why you can't wait and file it two weeks after the  
7 Supreme Court's decision -- you know, the Supreme Court may  
8 come out in March. It may come out in May. Who knows when  
9 the Supreme Court's going to come out.

10 But I don't -- again, it's your call. I can moot it and  
11 have you redo it. I can ask for supplemental briefing. But I  
12 think it's a waste of time until we hear from the  
13 Supreme Court. That's my perspective.

14 I'm not saying you can't do it.

15 **MS. RING:** We appreciate that, Your Honor. And we  
16 will think -- we will take that into consideration once we see  
17 the master complaint.

18 As I said, it's just -- we don't -- we don't know what  
19 it's going to look like. Once we have it we will take that  
20 into consideration.

21 **THE COURT:** We don't know specifically, but we do  
22 know generally they are trying something different. And it's  
23 not as if I don't understand 230. I threw a case out on 230,  
24 and it gets cited to me all the time. So it's not as if I  
25 don't understand it. The question is how far does it reach.



1           **MS. RING:** We agree, Your Honor.

2           **THE COURT:** So you may agree, I may agree, but until  
3 we hear from the Supreme Court, we don't know what the  
4 Supreme Court thinks, and they're the ultimate arbiter on the  
5 topic. That's why I think it's a waste.

6           **MS. RING:** I understand, Your Honor.

7           **THE COURT:** All right.

8           I don't see -- so I take it this is all per local rule in  
9 terms of briefing? You've not asked for more pages.

10          **MS. HAZAM:** Your Honor, I believe we intend to meet  
11 and confer about that issue and can do so as part of the same  
12 schedule.

13          **THE COURT:** How many pages do you want for your  
14 motion, assuming that it's the five or six claims?

15          **MS. RING:** Your Honor, we built time into the  
16 schedule to allow meet and confer on this, not because we  
17 can't talk about it now, but the reason that we can't decide  
18 on it now is because we don't know, for example, whether  
19 plaintiffs are going to file separate master complaints for  
20 each defendant. We just don't know. So that's the reason we  
21 haven't agreed to that yet.

22          **THE COURT:** All right.

23          And the short form complaint?

24          **MS. HAZAM:** Your Honor, we have a schedule that has  
25 the short forms complaints shared in proposed form to

1 defendants on the same date the master complaint is filed,  
2 together with a draft implementation order for those short  
3 form complaints.

4 We then have a two-week period for the parties to meet and  
5 confer and seek agreement, and then either submit an agreed-to  
6 form complaint and implementation order or submit any disputes  
7 we have regarding it.

8 Once Your Honor enters an implementation order, resolves  
9 any disputes as needed, then there are 21 days until  
10 short-form complaints must be filed. For those who had long  
11 form complaints, or shall we say their initial complaints, on  
12 file as of the date of the implementation order, short-form  
13 complaints will of course continue to be filed thereafter.

14 **THE COURT:** Okay. With respect to the filing on  
15 February 28th, letter briefs, four pages, single-spaced, one  
16 space in between each paragraph, and regular font.

17 I have a lot of you in here. I'll let you know,  
18 frequently we get footnotes that are ten-point font. Do not  
19 do that. It violates the rules. And I can't read them  
20 without glasses. So it's really easy for me to know when  
21 you've violated the rule because I can't read what you put.  
22 So don't do it. Ever. Ever. And the double space I don't  
23 like. So make sure it's single-spaced.

24 **MS. HAZAM:** Understood, Your Honor.

25 **MS. RING:** Yes, Your Honor.

1           **THE COURT:** What we should probably do so that -- in  
2 case I have any issues, we'll schedule another conference  
3 after February 28th. I'll be headed back into trial. And we  
4 can go back to this, but I think Friday -- Friday, March 3rd  
5 will probably work. So in the interim you can start looking  
6 at calendars.

7           All right. So April 4th to file the complaints is fine.  
8 The 17th to file the motions to dismiss are fine. June 1st  
9 for oppositions. June 30th for reply briefs. That all works.

10          Okay. Next on your -- with respect to the defendants' --  
11 I -- I do not agree, and we can talk about it again at the  
12 next conference, that motions to dismiss should be brought on  
13 a short-form complaint. That is the whole point of having a  
14 master complaint.

15          If there are individual things that need to happen later  
16 on the short-form complaints, we can do that in another phase.  
17 But we -- but I'm not doing it in the first phase. The whole  
18 point of the first phase is to resolve the big issues across  
19 the board. So those motions on short-form complaints will not  
20 be allowed, not unless I get a swarm of law clerks from the  
21 Ninth Circuit.

22           **MS. RING:** Your Honor, may I explain why we even  
23 raise that issue? There are a lot of MDLs where the courts  
24 issue decisions later and there's lots of fights later about  
25 what was intended, what are the -- what are the operative

1 pleadings. And I think there's no question that what you have  
2 in mind is that the operative pleadings are the master  
3 complaint as adopted by the short forms.

4 We also understand in most MDLs and most product MDLs,  
5 again, drug and device, there's just a checkbox. And if  
6 that's the case, we have no need to move on the short forms.

7 The reason that we raised it here is because, as you say,  
8 the plaintiffs are trying to do something new here. We don't  
9 understand yet how they're going to be able to take the  
10 complaints they currently have and put them all into a master  
11 complaint.

12 So what we were planning for the possibility of is that to  
13 state a claim, certain allegations are going to have to be  
14 included. And if those allegations are put into a short form,  
15 to accomplish the Court's goal of dealing with these threshold  
16 issues and to be moving on these claims, we're going to have  
17 to be able to move on the full set of allegations.

18 Now we don't know if those are even going to be in the  
19 short form but --

20 **THE COURT:** So I don't know one way or other. I  
21 certainly can envision something where some of these claims,  
22 perhaps not all, but some, the major ones, can be done by way  
23 of master complaint. That's why I said we should talk about  
24 it again once we have it.

25 **MS. RING:** Yeah.

1           **MS. HAZAM:** Your Honor, to respond to Ms. Ring.

2           We have frequently heard this refrain of "We don't know  
3           what will be in the short-form complaints." Obviously  
4           inherent in the process until they've seen that they won't  
5           know what it is word for word. But we have in fact on a  
6           number of occasions outlined the short-form complaints for  
7           defendants, noted that they will be consistent with those  
8           commonly used in other mass tort MDLs with boxes to check for  
9           the defendants being sued, causes of action being asserted,  
10          and the injuries being claimed. Sharing more than that with  
11          them now would essentially require actually identifying those  
12          claims, and that would be the premature.

13          We think it will be very straightforward to apply rulings  
14          on the motions to dismiss. And we don't believe that the  
15          short-form complaints even need to be on file at all before  
16          motions are brought. However, because that was a sticking  
17          point for the defendants, we proposed a schedule that would  
18          allow the initial batch of short-form complaints to, in fact,  
19          be on file before motions are filed.

20          We do not believe that that means that the Court needs to  
21          review and rule on every short-form complaint. As the Court  
22          has noted, that would defeat the purpose of the master  
23          complaint and mean that the Court had to engage in ongoing  
24          rulings as more short-form complaints are files, which they  
25          will be during the briefing process.

1           **THE COURT:** Well, I think it would be helpful to have  
2           at least some so I make sure I have an understanding of what  
3           it is you're contemplating.

4           **MS. HAZAM:** And you will, Your Honor.

5           **THE COURT:** It could be that, you know, the  
6           short-form complaints provide additional information about the  
7           plaintiff to the defense. Those kinds of things would be  
8           important for purposes of going forward if they do go forward.

9           I've got -- myself, I have concerns on the plaintiffs'  
10          side about -- and this is from colleagues who have noted these  
11          kinds of issues in other products cases where you have, you  
12          know, firms that are just -- oh, what's a good word to use --  
13          as they're recruiting people, kind of assembly line  
14          recruitment where lawyers are not doing their job to make sure  
15          that their plaintiffs are actually real plaintiffs, to make  
16          sure that the plaintiffs have not, you know, already been  
17          contacted, to make sure that they have claims. And frankly,  
18          I'm considering if -- again, if we get past this initial stage  
19          and we start having all of these things made, I'll tell you  
20          right now, I am considering making sure or requiring that a  
21          California lawyer over whom I have authority for ethical  
22          violations is assigned to each and every case and to make sure  
23          that due diligence on these plaintiffs is being done, and if  
24          the plaintiffs' lawyers are not doing their job, as they have  
25          in other -- in other products cases, sending them to the state

1 bar for discipline. I'm not going to have that happen in this  
2 case.

3 So with the horror stories that I hear from my colleagues  
4 on some of these product cases, I do not want happening in  
5 this case.

6 **MS. HAZAM:** Understood, Your Honor. We do not want  
7 that to happen either. And we'll do everything we can to  
8 prevent it and look forward to that conversation with you  
9 after the motions to dismiss.

10 **MS. RING:** Your Honor, if I may, I think that's an  
11 agenda item that the defense wanted to address. But just to  
12 close out the short form, if the short forms come in in the  
13 way that plaintiffs just described, we're not going to have an  
14 issue. It is simply that if allegations that are going to  
15 essential elements of the --

16 **THE COURT:** I don't -- I don't disagree with that.

17 **MS. RING:** Thank you.

18 **THE COURT:** But I also don't -- I also don't agree  
19 that it needs to happen in Phase 1. It can happen in a  
20 different phase.

21 So -- anyhow. But we'll have more conversations on that  
22 in the next go-around.

23 **MS. RING:** Thank you, Your Honor.

24 **THE COURT:** Okay. You've agreed on service of  
25 process, waiver of service and direct filing. I believe that

1 that is -- Docket 100-1 is the proposed form of order.

2 **MS. HAZAM:** Correct, Your Honor.

3 **THE COURT:** So, and this is an -- this is an  
4 agreed-upon document.

5 **MS. HAZAM:** It is, Your Honor.

6 **THE COURT:** So I am -- I am prepared to issue this  
7 order with one change, and that is that I don't know that the  
8 his or her reference in the order is actually fully  
9 appropriate. There are many people these days who do not use  
10 his or her as a pronoun, and I'm trying very hard to avoid  
11 that conundrum.

12 I just finished a trial with someone who was a she at the  
13 start of the incident and a he at the end of the incident. So  
14 I would like us to have better language in that order. You  
15 can use "his," "her" or "their," you can do something else,  
16 but I'd like you to revise that, and once you revise it, then  
17 send it to me, I'll issue it.

18 **MS. HAZAM:** Thank you, Your Honor. We'll do so.

19 Is using "their" acceptable to the Court even though it  
20 normally denotes a plural? That's a common means of  
21 addressing this issue.

22 **THE COURT:** It is now. It's taken me some time to  
23 get there, but --

24 **MS. HAZAM:** Okay.

25 **THE COURT:** -- I am there now.



1           **MS. HAZAM:** Thank you.

2           **THE COURT:** Okay.

3           With respect to -- I don't want to get into discovery  
4           right at this juncture. We'll come back to that.

5           And that's the bulk of the CMC statement.

6           With respect to public access, I didn't have this in time  
7           to get the cameras in the courtroom, but we'll have plenty of  
8           advance notice at this point. So the next CMC we'll have the  
9           cameras in the courtroom.

10          And they -- right, it's old-school technology, this pilot  
11          project. I mean they literally come and put cameras in. The  
12          Zoom doesn't work for that because you get feedback. So, you  
13          know, unless there was one Zoom camera that could get me and  
14          all of you all at the same time, but I haven't researched it  
15          and I don't have such a camera.

16          So you are all welcome to research it, and if the court  
17          can afford it, then perhaps I can make a request for it and we  
18          could be our own pilot, then we could do it on Zoom. If we  
19          did it on Zoom -- well, anyhow.

20          There are all sorts of AO requirements about live  
21          streaming versus not live streaming and whether or not and the  
22          extent to which it can be done.

23          But now that I know that there's agreement, I'll look into  
24          that. And if you all know of a camera that does that kind of  
25          thing, let me know, send me a note, and we can look into that.

1           **MS. JONES:** And, Your Honor, just from the  
2 defendants' perspective, we do as a general matter have  
3 agreement on this issue. There -- there may well be topics in  
4 certain hearings where we want to just revisit this particular  
5 issue. But as -- as a concept, we have no objection.

6           **THE COURT:** Yeah. Okay.

7           All right. The order with respect to the common benefit  
8 order, and I think that's Mr. Seeger.

9           **MS. HAZAM:** Yes, Your Honor, thank you.

10          **MR. SEEGER:** Good morning, Your Honor. Chris Seeger.

11          **THE COURT:** Good morning.

12          **MR. SEEGER:** Judge --

13          **THE COURT:** All right. So --

14          **MR. SEEGER:** Go ahead.

15          **THE COURT:** -- my big question with respect to this  
16 is whether it was circulated and whether people agree or don't  
17 agree. The one thing I will not agree to is telefax anymore.  
18 No one faxes. And if you do, get with the new technology.

19          I'm not --

20                               (Laughter.)

21          **MR. SEEGER:** I'm getting there.

22          **THE COURT:** I'm not agreeing to 50 cents a page to  
23 fax.

24          **MR. SEEGER:** Understood, Your Honor. I didn't put  
25 that in there, believe it or not.

1           **THE COURT:** Buck stops with you, Mr. Seeger, on this  
2 one.

3           **MR. SEEGER:** I got you. I believe it.

4           **THE COURT:** Okay. So has it been -- I mean obviously  
5 it was circulated in the sense that it was filed on the  
6 docket. Feedback from lawyers about this.

7           **MR. SEEGER:** Yeah. So, Your Honor, we have received  
8 some feedback, including some from defendants, which, you  
9 know, although frankly I could make the statement that they  
10 don't have a dog really in this race, a couple of legit  
11 comments have come up that I do think we could do a better job  
12 clarifying in the order that's before you.

13           So what I would like to do is put that aside, take a few  
14 days to gather up the comments or --

15           **THE COURT:** Well, I'd actually like to hear them.  
16 And I'd like to hear them because, again, I want to make sure  
17 that I'm understanding the considerations that people are  
18 thinking about --

19           **MR. SEEGER:** Yeah.

20           **THE COURT:** -- because I'm signing this.

21           **MR. SEEGER:** Correct. Okay.

22           So I'll -- there's a list in my head I'll go down.  
23 Hopefully I'll capture them all.

24           But one item that was raised that I do think is legit is  
25 we should clarify a little better that the holdback, should

1     you sign that order, that the holdback of the common benefit  
2     assessment would not increase the amount that clients pay.  
3     It's a redistribution of attorneys' fees from lawyers to  
4     lawyers.

5             So that, I think we could do a better job clarifying to  
6     make sure that everybody understands it.

7             The defendants have raised issues about the scope of the  
8     order, who it covers. Does it just cover lawyers who have  
9     cases in the MDL? Lawyers who have cases in the MDL and in  
10    state court? Lawyers that only have cases in state court?

11            And I would like to work through some of those issues with  
12    them because, like I said, I think there's some really good  
13    answers. And I think the answer is yes to all of that, but  
14    I'd like to have an opportunity to lay my thoughts out to them  
15    as well and to Your Honor if you want to talk about it when we  
16    resubmit it.

17            Defendants had a concern about the percentage being stated  
18    upfront as opposed to adding that later. It's always been my  
19    practice, I think -- I think appreciated by most judges, but,  
20    Your Honor, you'll have your own take on this, is to put the  
21    percentage in upfront with the understanding that the Court  
22    can adjust that. Because the ultimate decision is the  
23    Court's. It's our ask.

24            But by putting it upfront, we at least let plaintiffs'  
25    lawyers who participate know what the deal is going in so

1       there's no surprise on that.

2           And, again, Ms. Jones may have some response to these.  
3       I'm giving you my thoughts without really having theirs fully.

4           And then, oh, the one issue I think does involve the  
5       defendants frankly, and it's a fair one, is the reporting  
6       requirement.

7           So if settlements are occurring, we need to have a way to  
8       track them so that we know what amounts need to be held back  
9       because the holdback requirement is on the defendants.

10          I had a brief call -- a couple email exchanges yesterday,  
11       a brief call this morning. I was open to, and my colleagues  
12       are, a proposal by defendants that might differ from ours as  
13       long as it gets the job done. But I haven't heard the  
14       proposal yet and I haven't had a chance to discuss it with  
15       them.

16                               (Simultaneous colloquy.)

17           **MS. JONES:** I'm sorry.

18           **MR. SEEGER:** I think those are the main points --

19           **MS. JONES:** Yeah, Your Honor, from the defendants'  
20       perspective, I think Mr. Seeger has correctly identified the  
21       issues that we've raised with them. And I agree we need a  
22       little bit more time to work those through.

23           I think for Your Honor's reference, to the extent that  
24       it's of any interest or informative of any way -- in any way,  
25       Judge Chhabria issued an order in the Roundup MDL, it's

1 Docket -- it's deep in the docket, it's Docket 13190 in case  
2 number 16 MD 2741 --

3 **THE COURT:** Which you can -- which you can file on  
4 the docket for me.

5 **MS. JONES:** Happy -- and we're happy -- we're happy  
6 to do that, Your Honor.

7 But I just -- just to kind of -- if you're interested in  
8 just kind of getting a little bit of a perspective on some of  
9 these issues which frankly are driving some of the questions  
10 that we raised with plaintiffs' counsel, that that might be a  
11 useful reference for that purpose.

12 But I agree that Mr. Seeger has properly characterized the  
13 issues that we raised and that there's more room for us to  
14 work on these things.

15 **THE COURT:** All right. Well --

16 **MR. SEEGER:** By the way --

17 **THE COURT:** -- and I can talk to Judge Chhabria about  
18 his --

19 **MR. SEEGER:** And, Your Honor, I do agree with defense  
20 counsel that you need to be -- it was important for you to  
21 know that order exists. We have our views on it, they have  
22 their views. But it is important for you to know that exists.  
23 It's a judge in your district obviously.

24 **THE COURT:** The other thing you should know upfront,  
25 because this involves minors, all settlements of minors I must

1 approve.

2 **MR. SEEGER:** Yeah.

3 **THE COURT:** And when I presided over the Asiana  
4 Airline crash case MDL, and we had minors in that case, I  
5 would -- I tracked, because we had different lawyers, so the  
6 different lawyers did not always know what was being settled  
7 in terms -- with the defendants. The defendants obviously  
8 knew. The plaintiffs' lawyers did not.

9 **MR. SEEGER:** Correct.

10 **THE COURT:** I do ask questions and I will track to  
11 make sure that some minor is not being treated unfairly. So  
12 just again an FYI in how I deal with that issue.

13 **MS. JONES:** It's understood.

14 **THE COURT:** There should be some reason, something  
15 rational, you should be able to explain to me why you were  
16 paying more or less to a minor versus not.

17 **MS. JONES:** Understood.

18 **THE COURT:** Okay.

19 Any plaintiffs' lawyer in the courtroom, if you have any  
20 issues with this order, you can come forward if you want. Up  
21 to you. Got a lot of you in here.

22 You're not going to hurt Mr. Seeger's feelings.

23 **MR. SEEGER:** Not at all.

24 **THE COURT:** I think.

25 **MR. SEEGER:** And we are going to follow up with

1 everybody again, Your Honor. In light of the fact that I'm  
2 asking you to put the one we gave you aside, I want to make  
3 sure that we get everyone's thoughts.

4 **THE COURT:** Okay. When you resubmit it, please send  
5 to the proposed mailbox so you don't have to do it on the  
6 docket, but I do want a redline --

7 **MR. SEEGER:** Okay.

8 **THE COURT:** -- with the changes. That will make  
9 it -- I've already reviewed it. So that will make it easier  
10 for me to know how it's been changed.

11 **MR. SEEGER:** Can I just ask you one question on the  
12 issue that was raised by Ms. Jones about Judge Chhabria's  
13 order.

14 You may read that and have questions for us. Would you  
15 want us to wait until you've looked at that and then decide  
16 how you may want to deal with questions you may have? Or  
17 would you like us to submit the order with some type of a --  
18 maybe a short brief? Just want to make sure we've done what's  
19 easier for you, Your Honor.

20 **THE COURT:** I don't have an answer to that question  
21 because I don't know what I'm going to think.

22 **MR. SEEGER:** Okay.

23 **THE COURT:** So if --

24 **MR. SEEGER:** I could preview it and say he was wrong  
25 about a few things.



1           **THE COURT:** I'm sure you think that. I'm also sure,  
2           knowing my colleague, that he thinks he's right.

3           So I think the question is can -- can it -- can it wait to  
4           have this issued until March? If it can't, if it's better to  
5           have it done sooner rather than that, you know, we might be  
6           able to just do a quick Zoom hearing just on that topic rather  
7           than have everybody come in.

8           But I don't know that there's anything -- so let's just  
9           put that on the side and see if we need to have a separate  
10          hearing on it.

11          **MR. SEEGER:** Okay.

12          **MS. JONES:** And, Your Honor, to the extent that it  
13          affects any of the timing, I do agree with Mr. Seeger that as  
14          a general matter, you know, all of us who play in the space  
15          recognize that these common benefit fund orders typically are  
16          really within the plaintiffs' lawyers' domain. So I would not  
17          expect the defense will have, you know, broad comments on the  
18          balance of the order. I think Mr. Seeger has captured the  
19          issues that we've raised. So it would probably be a pretty  
20          narrow set of issues.

21          **THE COURT:** Well, then the other thing that could  
22          happen is you could submit it. There could be a -- you know,  
23          a letter brief identifying different language or -- or a brief  
24          identifying different proposed language if you think it's  
25          really important. I could consider both.

1 And if -- given that it's -- what I would -- what I would  
2 tend to do, Mr. Seeger, since it's an order for the  
3 plaintiffs, is if I disagree with your proposal, then I could  
4 schedule a hearing --

5 **MR. SEEGER:** Okay. Sounds fair.

6 **THE COURT:** -- to give you an opportunity to tell  
7 me. If I agree with you and decide I'm, you know, just not  
8 inclined to go the other way, then I can just issue the order.

9 **MR. SEEGER:** Okay.

10 **THE COURT:** But I can contact liaison counsel and get  
11 something scheduled.

12 **MR. SEEGER:** Absolutely.

13 **THE COURT:** Okay. Why don't we do that.

14 **MR. SEEGER:** Okay. Thank you, Your Honor.

15 Is there anything else on the common benefit for now?

16 (Pause in the proceedings.)

17 **THE COURT:** No. I didn't have any other questions on  
18 that.

19 **MR. SEEGER:** All right. Thank you for your time.

20 **THE COURT:** Okay. In terms -- well, I still need to  
21 do the guardian ad litem. And here, it didn't look like there  
22 were any objections so this order will issue. And I'm fine  
23 with the approach.

24 Okay. So let's talk discovery.

25 My primary goal in allowing for a measure of discovery is

1 again to make sure that we are dealing with the best complaint  
2 that we can deal with.

3 If you will -- I mean obviously, Mr. Warren -- and you  
4 should state your appearance.

5 **MR. WARREN:** Good morning, Your Honor, and thank you.

6 Previn Warren with Motley Rice for the plaintiffs.

7 **THE COURT:** Mr. Warren, the documents that are  
8 currently in your possession in this other case, have you  
9 reviewed them?

10 **MR. WARREN:** Yes, Your Honor. My firm's reviewed all  
11 of them.

12 **THE COURT:** Okay. And what is the -- how many are  
13 there?

14 **MR. WARREN:** I don't have a precise number, but it's  
15 somewhere between a thousand and 1,500.

16 **THE COURT:** Okay. Would it be your intent to use  
17 information from those documents for purposes of the master  
18 complaint?

19 **MR. WARREN:** Your Honor, we would like to do that,  
20 but that would require us to discuss with defendants the  
21 confidentiality designation of those documents, and to the  
22 extent appropriate or needed, to brief those with Your Honor.

23 Our position is that the documents in bulk have been  
24 released to the public, to Congress, the SEC, and to the  
25 press. For that reason, they're not confidential and we ought

1 to be able to rely on them in building out our master  
2 complaint.

3 **THE COURT:** I'm inclined to order the production of  
4 those 1,000 to 1,500 documents.

5 Response.

6 **MS. JONES:** Yeah, thank you, Your Honor.

7 Let me, if I could, just take a step back to give a little  
8 bit more context about what these 1,300 documents are, in part  
9 because although there was a suggestion in the CMC statement  
10 that they were, quote, highly relevant to this case, it is in  
11 fact the case that a high percentage of the documents, and  
12 Mr. Warren will know this if his firm has reviewed the  
13 documents, have nothing to do with the case.

14 And in fact, we're not talking about close calls in terms  
15 of whether something may be related or not. We're talking  
16 about documents about climate change and election interference  
17 and other topics.

18 **THE COURT:** So one of the problems you have is that  
19 you didn't do this before. There are 1,300 documents and  
20 rather than say, "You've looked at them, Mr. Warren, I've  
21 looked at them. At most there are 200 relevant documents,"  
22 you said, no, we agreed to nothing. And that's in part the  
23 problem. So you've got hundreds and hundreds of hours that  
24 are involved in the production, 800 hours, you claim.

25 **MS. JONES:** Not with respect -- that's a separate

1 category.

2 **THE COURT:** I understand that. But you've -- you've  
3 not agreed to anything. You have taken the position that  
4 nothing is acceptable.

5 **MS. JONES:** No, Your Honor, respectfully we haven't.  
6 We have --

7 **THE COURT:** Okay. So why am I having this  
8 conversation?

9 **MS. JONES:** With respect to the Molly Russell  
10 documents, if we're just talking broadly about their different  
11 requests, with respect to the Molly Russell documents, we  
12 communicated to Mr. Warren and his colleagues yesterday that  
13 we -- there was a compromise that we were prepared to reach  
14 with respect to that proceeding which is concluded. So it's  
15 not the case that we've agreed to nothing.

16 With respect to the Haugen documents, we can --

17 **THE COURT:** Let's focus on these, then.

18 **MS. JONES:** Okay. And I'm sorry, when you say these,  
19 do you mean Haugen and the Molly Russell documents?

20 **THE COURT:** The Molly Russell documents.

21 **MS. JONES:** Okay.

22 **THE COURT:** And that's the easiest for me because  
23 Mr. Warren knows what they look like.

24 **MS. JONES:** But those are not the -- those are -- he  
25 has the Haugen documents, Your Honor.

1           **THE COURT:** So those are the ones that we should talk  
2 about. Those are the 1,300.

3           **MS. JONES:** Those are the 1,300. And just to be  
4 clear, Your Honor, we communicated to Mr. Warren and his  
5 colleagues back in August that many of the documents that you  
6 will have received from Ms. Haugen and her counsel have  
7 nothing to do with these cases.

8           And if you wish to actually pursue documents that have  
9 something to do with these cases, you could do so properly  
10 under the applicable rules of procedure in the state court  
11 proceeding.

12           It's not -- it's not news to plaintiffs' counsel for the  
13 first time today that there are any number of documents within  
14 that set of documents that have nothing to do with these  
15 cases.

16           And the -- and the problem that we have from our  
17 perspective is what has been contemplated by the plaintiffs is  
18 that we would have to do, if we were really trying to parse  
19 through these materials --

20           **THE COURT:** But you --

21           **MS. JONES:** -- we would have to undertake a review  
22 exercise in the context of a discovery stay where we have a  
23 Section 230 defense that has not been resolved and a motion to  
24 dismiss that hasn't been resolved by the Court. That's the  
25 challenge that we've confronted in this regard.

1           **MR. WARREN:** May I be heard, Your Honor?

2           **THE COURT:** You may.

3           **MR. WARREN:** Simply put, defendants have said no.  
4 They've said no to allowing us to review or use any of the  
5 Haugen documents, period, in this litigation at this moment in  
6 time.

7           We have communicated to them that it requires no work on  
8 their part. I have them. I can give credential access to my  
9 cocounsel in this MDL. They need to do nothing to allow this  
10 to happen.

11           They have had months to identify to us if there are  
12 documents they think are so clearly irrelevant to this  
13 proceeding that they should not be part of any compromise  
14 deal. They have not approached me with any compromise deal.

15           The first time ever they suggested that there was any  
16 procedural impropriety of me getting these materials was in  
17 their draft case management conference statement.

18           I don't think that suggestion has any merit. We properly  
19 subpoenaed Ms. Haugen. She gave us the documents. We told  
20 Meta immediately we have the documents. We gave those  
21 documents to Meta, provided them a full and fair  
22 opportunity --

23           **THE COURT:** When was that?

24           **MR. WARREN:** Well, I have a full timeline, Your  
25 Honor. We served a subpoena on Ms. Haugen on August 25th. On

1 August 29th, Ms. Haugen produced the documents to us. On  
2 September 1st, we provided all of those to Meta and began the  
3 process of meeting -- I'm sorry. On September 1st we began  
4 the process of meeting and conferring with Meta about how they  
5 would go about identifying any privileged materials in those  
6 documents.

7 We abstained from reviewing any of them, not even a single  
8 word, until Meta had provided a privilege log as well as  
9 redacted copies of any documents they felt should be redacted.  
10 We waited patiently. They blew the deadlines on more than one  
11 occasion. We didn't complain. And when we finally received a  
12 privilege log and redacted copies, we began our review.

13 There was never a suggestion, not once, that we would --

14 (Simultaneous colloquy.)

15 **THE COURT:** When did you begin your review?

16 **MR. WARREN:** Excuse me?

17 **THE COURT:** When did you begin your review?

18 **MR. WARREN:** I do not know the exact date when they  
19 provided us with their final privilege materials and we began  
20 reviewing. I cannot answer that question, Your Honor. But it  
21 would have been several weeks ago.

22 **MS. JONES:** And, Your Honor, you will not be  
23 surprised to hear that we have a slightly different  
24 perspective on the timeline here, including that as soon as  
25 the subpoena was served for these documents, we almost -- we



1 immediately sent a note back, and I know this because I was  
2 the one who sent the email to Mr. Warren and his colleagues,  
3 that said we plan to move to quash. Those documents were  
4 taken from the company without permission. The documents  
5 concern, I'm quoting here, a wide array of topics that have  
6 nothing to do with your client's claims, and they also include  
7 attorney-client and attorney work product materials. They're  
8 confidential proprietary information. If you need to seek  
9 discovery on these issues, you can do so with respect to Meta  
10 under the relevant California rules. We intend to move to  
11 stay pending a demurrer that we would file.

12 And then the California state case was stayed. So to the  
13 extent that there has not been procedural activity around  
14 those issues, that's the reason for that.

15 But in any event, to the extent that there's a question  
16 about whether or not Mr. Warren and his colleagues properly  
17 secured the documents, whether or not we properly raised the  
18 issue, that's an issue to be adjudicated in the state court  
19 proceeding.

20 The motion that they are going to try to make an end-run  
21 around that issue being resolved in state court and instead  
22 come here and say to Your Honor we want to be able to share  
23 1,300 documents, many of which -- and I don't hear them  
24 disagreeing with this -- many of which have nothing to do with  
25 our claims, many of which involve very sensitive topics

1 without any kind of -- without any kind of mechanism for  
2 avoiding mischief around the sharing of those documents,  
3 that's -- that's where -- that's where we are.

4 And I -- again, I think it probably bears repeating that  
5 we're in a little bit of an odd situation where discovery has  
6 been stayed --

7 **THE COURT:** General discovery has been stayed, but  
8 that doesn't mean I don't have, under Rule 1, the ability and  
9 the power to order a small measure of discovery if it is going  
10 to make these proceedings more efficient, which I believe it  
11 will.

12 So this is what you will do. You will identify  
13 specifically, Mr. Warren, the documents which you want to use  
14 in the master complaint. You're going to have to make that  
15 judgment on your own.

16 **MR. WARREN:** Very well, Your Honor.

17 **THE COURT:** You will identify those to the defendant.  
18 If -- in terms of producing those specifically or providing  
19 access to those specifically to the plaintiffs' attorneys only  
20 under a highly -- under whatever the appropriate level is  
21 under the protective order.

22 Within one week of receiving that notification, if the  
23 defendant objects on relevance grounds or any other ground  
24 other than -- well, I guess you can preserve it in terms of  
25 you don't think that any discovery should be provided, period,

1 you take that to Judge Hixson and he'll make the call.

2 But that way, again, I am only interested in trying to get  
3 the plaintiffs the documents that they need so that this  
4 master complaint is as fulsome as it should be for purposes of  
5 resolving these proceedings one way or the other.

6 **MR. WARREN:** Thank you, Your Honor. We understand  
7 and we'll abide by that process.

8 I should have mentioned what should be fairly  
9 self-evident, that we may file the master complaint partly  
10 under seal if necessary while some of those documents remain  
11 covered by the highest --

12 **THE COURT:** I think that's appropriate.

13 **MR. WARREN:** Thank you, Your Honor.

14 May we address some of the other categories of documents?

15 **THE COURT:** You may.

16 **MR. WARREN:** All right. Thank you.

17 I'm pleased to report that the parties -- that the  
18 plaintiffs appear to be close to an agreement with both Snap  
19 and Google as to documents that they would be producing at  
20 this stage. I don't think we've finalized that fully, but  
21 we're on the precipice of an agreement and so we don't have  
22 any issue to raise with respect to them at this time.

23 The issue with the Molly Russell proceeding, so the offer  
24 that was made by defendants, Meta specifically late last night  
25 and then again this morning, was to provide two out of three

1 witness statements from Meta's head of safety, Elizabeth  
2 Lagone, which were presumably prepared by Meta, you know, with  
3 some modicum of direction from Meta's counsel and then  
4 presented to the coroner.

5 What Meta has indicated they possess and are unwilling to  
6 produce include some of the materials that Instagram had  
7 pushed to Molly Russell and that were, you know, plainly  
8 relevant to the coroner's determination that her addiction to  
9 social media was a cause of her death.

10 We think it is unreasonable for us to see only one-half of  
11 the picture and the record that led to the coroner's  
12 conclusion and not the other half. Part of what we want to  
13 understand is what motivated the coroner's decision to make  
14 that determination. For that reason --

15 **THE COURT:** Why can't you get that from the coroner?

16 **MR. WARREN:** Your Honor, we very well might be able  
17 to do that and we can reach out to the coroner to ask for that  
18 material.

19 **THE COURT:** I don't understand why you can't get it  
20 from the coroner if, you know, Meta -- and/or those who  
21 represent Ms. Russell, if you take it from that perspective,  
22 then defendants don't have a basis for objecting.

23 **MR. WARREN:** Your Honor, you're absolutely right. I  
24 agree with you. And we have reached out to the Russell  
25 family, their representative, to seek their consent. So

1 perhaps this is a premature issue.

2 **THE COURT:** And not only that, I would also say again  
3 back to the discussion we're having. Before -- the specifics  
4 of any one particular person could be problematic in a master  
5 complaint. So I don't know why you need that for a master  
6 complaint.

7 **MR. WARREN:** Very well, Your Honor. Well, we will --  
8 we will attempt to pursue that discovery through other means.

9 **MS. JONES:** And, Your Honor, I think -- I think  
10 you've put your finger on the concern that we've had which is  
11 we -- we've articulated for the plaintiffs a willingness to  
12 share with them two of three witness statements. The third  
13 witness statement relates entirely to Ms. Russell, and we  
14 don't feel at liberty to or that it would be appropriate for  
15 to us produce those -- those materials.

16 So I think this is probably an issue where the parties  
17 could -- could benefit from a little bit more time to consult,  
18 but at least as to some part of the request, we have reached  
19 an agreement.

20 **MR. WARREN:** Your Honor, I agree with Ms. Jones on  
21 that. And I do think if the defendants are prepared to, you  
22 know, permit us to receive discovery from outside sources  
23 without attempting to quash that in any way, then that would  
24 be -- certainly go a ways to resolving the issue.

25 **MS. JONES:** And I want to be clear here in saying

1 we've not had a discussion on our end about efforts to seek  
2 these materials from the coroner directly. I'm not suggesting  
3 we necessarily would try to resist that. I just want to be  
4 sure that we're -- that I'm at least putting that marker down.

5 **THE COURT:** All right. What else is there?

6 **MR. WARREN:** There really is only one other category,  
7 Your Honor, of documents, and they concern discovery that Meta  
8 and Tiktok have apparently provided to a group of state  
9 attorneys general in two investigations. The attorneys  
10 general involved are California, Florida, Kentucky,  
11 Massachusetts, Nebraska, New Jersey, Tennessee, and Vermont.  
12 For the Tiktok investigation, my understanding is Illinois is  
13 also involved.

14 The way in which those investigations have been described  
15 by the attorneys general makes clear that they're directly  
16 related and relevant to this MDL.

17 If I may, I would quote former Attorney General Maura  
18 Healey, now Governor Elect, whose press release described it  
19 as such, quote: A nationwide investigation into whether  
20 Tiktok is designing, operating, and promoting its social media  
21 platform to children, teens, and young adults in a manner that  
22 causes or exacerbates physical and mental health harms.

23 AG Bonta, from of course California, had said something  
24 very similar about the investigation into Meta.

25 My understanding, which we only learned again through the

1 statement that defendants provided us, that there are enough  
2 documents that for defendants to go through and review them  
3 for relevance it would take 800 hours.

4 Our perspective is that work is entirely unnecessary. It  
5 will all be relevant. In any event, unilateral redactions on  
6 the basis of relevance are problematic and -- and as a general  
7 rule not permitted in -- in this circuit.

8 So we see, you know, no administrative burden in handing  
9 these over. To the extent there was privilege in any of those  
10 materials, presumably it's already been -- it was screened  
11 before being handed over to the AG. And if it wasn't, the  
12 privilege has been waived. There is no selective waiver  
13 doctrine in the Ninth Circuit.

14 So we again see no -- nothing that would cause any sort of  
15 burden in providing that production. We feel like we ought to  
16 be on even footing as plaintiffs in this MDL in producing a  
17 master complaint that takes advantage of the evidence that  
18 state AGs are currently reviewing and presumably in preparing  
19 their other than lawsuits, and for that reason would  
20 request -- would request those materials.

21 The last thing I would say is I know there's some concern  
22 expressed by defendants that the investigations are ongoing or  
23 haven't concluded. I don't know if we'll ever know when the  
24 investigations are concluded. I don't know if the state  
25 attorneys general are in the business of letting targets of

1 their investigation know that their work is done.

2 But more to the point, there are past cases in which, you  
3 know, the reproduction of discovery from ongoing  
4 investigations has been permitted. I would cite Docket 2712  
5 from the opioids MDL. And I'm quoting: A defendant's  
6 production of documents to the federal government in  
7 connection with ongoing investigation does not inoculate those  
8 documents from discovery if production is appropriate.

9 And I think that statement very much applies to the  
10 present case.

11 **THE COURT:** Well, in that case, though, discovery was  
12 open.

13 **MR. WARREN:** Yes, Your Honor, that's correct.

14 **THE COURT:** All right. A response.

15 **MS. JONES:** Thank you, Your Honor.

16 And I -- I want to give counsel for Tiktok an opportunity  
17 to speak on their behalf if -- if they're inclined to.

18 But just very -- very generally, what we're talking about  
19 here is a request of the defendants to produce materials that  
20 have been produced in ongoing investigations involving certain  
21 of the defendants.

22 We have looked very --

23 **THE COURT:** So hold on.

24 **MS. JONES:** Yes.

25 **THE COURT:** Is the argument going to be no discovery



1 because of the stay? Or are you making a different argument?

2 **MS. JONES:** Well, that's -- that's certainly part of  
3 the argument, Your Honor. The other part of the argument is  
4 there is a meaningful burden presented by what they are  
5 proposing.

6 We think we would have a right to review those documents  
7 to determine whether or not they would be appropriately  
8 responsive in the context of these specific cases where we  
9 still have not had an opportunity to see whatever the master  
10 complaint would look like.

11 We think it is within this Court's ability and authority  
12 to take notice of the fact that these are ongoing  
13 investigations and the potential --

14 **THE COURT:** So then how do you deal with the opioid  
15 precedent, not binding but certainly persuasive, that just  
16 because it's an ongoing investigation doesn't necessarily  
17 shield you from production.

18 **MS. JONES:** Our understanding of what happened in the  
19 opioid litigation was in fact that Judge Polster determined  
20 that there were certain materials that were off limits because  
21 in fact there was an ongoing investigation.

22 There's also, of course, the *WorldCom* litigation citation  
23 that we included in the CMC statement which stands for the  
24 same basic proposition that there's nothing to suggest that  
25 there's some wide-scale entitlement to information from

1 ongoing investigation matters.

2 **THE COURT:** In the antitrust context, we routinely in  
3 MDLs order the production of documents that had been produced  
4 to the U.S. Attorney's Office in the parallel proceedings,  
5 routinely. Day one. In fact, I would be 30 days late at this  
6 point from having ordered that and my colleagues having  
7 ordered that. It is routine.

8 **MS. JONES:** From our -- from our perspective, Your  
9 Honor, in our procedural posture, and you anticipated that I  
10 was going to mention the discovery stay because we do view  
11 that as being significant because --

12 **THE COURT:** So other than that, then there's no  
13 objection really.

14 **MS. JONES:** There is a burden objection, Your Honor,  
15 and it is a material burden from -- from our perspective. It  
16 is --

17 **THE COURT:** But you have the letters from the AGs or  
18 the document requests from the AGs.

19 **MS. JONES:** We do.

20 **THE COURT:** All right. File those under seal so that  
21 I can see them.

22 **MS. JONES:** We will, Your Honor.

23 **THE COURT:** You don't have to provide them to the  
24 other side at this point. We'll see how irrelevant the --

25 (Simultaneous colloquy.)

1           **MS. JONES:** Well, just to be -- just to be clear,  
2           Your Honor, our argument is not that they are necessarily  
3           irrelevant. Our argument is that for us to feel -- to be able  
4           to produce those documents in the way that they've discussed,  
5           which is to just press a button, is not workable from our  
6           perspective.

7           We think the defendants have a right to look at those  
8           documents and make a judgment about whether or not they're in  
9           or out in terms of what these cases are. I'm not  
10          suggesting --

11          **THE COURT:** No, you did suggest in your CMC statement  
12          that they weren't relevant. And so if you are making the  
13          argument that they are not relevant and you want to spend  
14          800 hours to determine whether they are relevant, then that's  
15          very different than -- than some kind of different argument.  
16          But that's the argument that you've made.

17          **MS. JONES:** Well, your Honor, if we were unclear in  
18          the argument we were advancing in the CMC statement, I  
19          certainly apologize for that.

20          **THE COURT:** With respect to Meta's assertion that it  
21          would -- all right. Go ahead.

22          Go ahead.

23          And I see someone who wants to stand up over there.

24          **MS. JONES:** I believe that's Mr. Drake on behalf of  
25          Tiktok.

1 All that I was saying was to the extent that there was a  
2 miscommunication via the CMC statement, I apologize to the  
3 Court.

4 I think our -- the only point we were making was to say  
5 that we believe in this circumstance that the defendants do  
6 have the right to review the documents and determine whether  
7 or not they would be appropriately produced in this context.  
8 That's -- and I'm not suggesting that the relevant requests  
9 from the state AGs don't track to some extent the topics in  
10 these cases. But -- but we have a right in this setting --

11 **THE COURT:** You certainly --

12 (Simultaneous colloquy.)

13 **MS. JONES:** -- review those documents.

14 **THE COURT:** You certainly can choose to do that over  
15 and above the fact that you've already done it. That's --  
16 but -- but that's different from saying there's an extra  
17 burden. You can have -- you have the choice to do that in  
18 addition.

19 But if I have a request that tracks identically the  
20 complaint and you have made judgment calls already to produce  
21 those to attorneys general, you have made that determination  
22 already.

23 **MS. JONES:** Well --

24 **THE COURT:** Hold on.

25 **MS. JONES:** Um-hmm.

1                   **THE COURT:** When you can in fact easily produce it.

2                   Now if you choose to do a second review, that is your  
3                   choice. That is not an additional burden. It is your choice.

4                   **MS. JONES:** I apologize for interrupting, Your Honor.  
5                   I want to give you a chance -- I wanted to make sure you had a  
6                   chance to finish what you're --

7                   **THE COURT:** Don't worry about me. I can manage my  
8                   own --

9                   **MS. JONES:** No, understood.

10                  The only point I wanted to -- and something you said I  
11                  think really highlights one of the issues here which is that  
12                  we don't have a master complaint in these cases yet.

13                  So -- and they've told us that what they're going to do in  
14                  their master complaint is to some extent going to be different  
15                  insofar as they're going to abandon content, for example.

16                  So it's hard for either the defendants or for the Court to  
17                  take the existing request from the state AG proceedings and  
18                  compare them to something that has not yet been filed by the  
19                  plaintiffs.

20                  **THE COURT:** I don't know that because I lack  
21                  information. That's why I'm asking to you file one.

22                  **MS. JONES:** Understood. Understood.

23                  I want to give Mr. Drake a chance to speak if he wanted  
24                  to.

25                  **MR. WARREN:** Your Honor, may I address two quick

1 things?

2 **THE COURT:** You may.

3 **MR. WARREN:** I'm willing to --

4 **THE COURT:** Wait. No, no. I'm sorry. Go ahead,  
5 Mr. Warren.

6 **MR. WARREN:** I'm sorry. Two quick things.

7 I am willing to represent to the Court right now that our  
8 master complaint will raise allegations that are consistent  
9 with Attorney General Bonta's description of his investigation  
10 into Meta. And I'm going to quote what that description is:  
11 It's an investigation into Meta Platforms, Inc., formerly  
12 known as Facebook, for providing and promoting its social  
13 media platform, Instagram, to children and young adults  
14 despite knowing that such use is associated with physical and  
15 mental health harms.

16 So in order to take off the table that there's some  
17 mystery, some great mystery as to what our master complaint is  
18 going to say, I will make the representation to the Court and  
19 to defense counsel right now that we will raise allegations  
20 consistent with that description of the Attorney --

21 (Simultaneous colloquy.)

22 **THE COURT:** Well, let me ask this. If you make that  
23 allegation in a complaint that they know that such use is  
24 associated with physical and mental health, that they have  
25 actual knowledge, one of the approaches I could take is to

1 reject any notion they don't have knowledge. Right?

2 Sometimes defendants come in here and say, oh, that's a bald  
3 allegations without any factual support.

4 I don't know what else you have. I don't know what's in  
5 those other documents.

6 **MR. WARREN:** Well, Your Honor, we do -- I'm sorry.

7 **THE COURT:** But -- let me finish.

8 **MR. WARREN:** Please.

9 **THE COURT:** But if the defendants keep wanting to  
10 refuse to produce, and then want to also argue that they have  
11 no knowledge and that the allegations are bald, then I could  
12 reject that and you would need nothing else.

13 **MR. WARREN:** I understand, Your Honor.

14 We do have the benefit in this litigation of certain of  
15 Ms. Haugen's whistleblower documents having been released to  
16 the press. And those are publicly known and I can publicly  
17 state them, and we believe they support the allegations as I  
18 just described them. But that isn't to suggest remotely that  
19 what's in these other productions wouldn't be material,  
20 useful, and supportive in us building our master pleadings.  
21 We certainly anticipate that they would.

22 **THE COURT:** All right.

23 Mr. Drake?

24 **MR. DRAKE:** Geoffrey Drake, King & Spalding, for  
25 Tiktok and ByteDance.

1 Good morning, Your Honor. I'll just make two very brief  
2 quick points on top of Ms. Jones'.

3 We'd also appreciate the opportunity to file under seal  
4 the CIDs that were issued in the multistate investigations.

5 The issue that we have there, Your Honor, as Your Honor  
6 will see when you have an opportunity to review those CIDs, is  
7 that the scope of the document requests in that investigation,  
8 while some of them perhaps relate to some issues that  
9 Mr. Warren raised, various of those requests relate to a whole  
10 host of other issues.

11 And that is why, from Tiktok's perspective, a further  
12 review of documents to identify those that are particularly  
13 relevant to what we anticipate this litigation to be about  
14 will be necessary. So we can file those under seal forthwith  
15 so that Your Honor has an opportunity to review them.

16 The second point, while I appreciate Mr. Warren's comment  
17 that perhaps you don't know when an investigation is closed,  
18 we know that those investigations are not closed, and the  
19 document productions continue.

20 So we're dealing with a bit of a rolling issue, Your  
21 Honor, where productions will have to continue to be made and  
22 then perhaps reproduced in this case.

23 We think the better course of action, consistent with the  
24 CMC statement, because we don't believe that any of the  
25 documents that we're talking about are particularly necessary



1 for the plaintiffs to file their master complaint, is really  
2 just one of timing. Obviously once we get into discovery, the  
3 plaintiffs issue their document requests, we would certainly  
4 leverage any productions made to any other agency or body in  
5 terms of identifying documents that are potentially responsive  
6 to the plaintiffs' requests in this litigation.

7 So thank you.

8 **THE COURT:** I take it that when you've done your  
9 productions, and this goes to Ms. Jones as well, when you've  
10 done your productions, you have actually identified the  
11 documents that are -- by Bates number -- that are relevant to  
12 each particular request, right? So you do know how many  
13 documents, how many pages you are producing per request.

14 **MR. DRAKE:** I can't answer that question today, Your  
15 Honor. I'm not exactly sure how it was done in this  
16 investigation. I know from other matters that I've worked on  
17 that I've done it both ways, depending on what the government  
18 has required and really the scope of the -- of the scale of  
19 the production.

20 **THE COURT:** And what is the scale of your production?

21 **MR. DRAKE:** It's about 8,000 documents today.

22 **THE COURT:** 8,000 pages or 8,000 documents?

23 **MR. DRAKE:** I believe it's documents.

24 **THE COURT:** All right. And, Ms. Jones --

25 **MR. DRAKE:** Thank you.

1           **THE COURT:** -- how about you, do you know whether  
2           your productions have been specific to the requests?

3           **MS. JONES:** I would have to offer the same response  
4           that Mr. Drake did which is that I just don't know that  
5           standing here today to what extent they're -- they're kind of  
6           broken out in that way.

7           **THE COURT:** All right. So then both of you, when you  
8           file those requests under seal, make sure you identify for me  
9           whether your productions were specific to the requests or not.

10          **MS. JONES:** Understood.

11          **MR. DRAKE:** Yes, Your Honor.

12          **MR. WARREN:** Your Honor, if I may?

13          **THE COURT:** Hold on before I forget.

14               And that should be done by -- by Monday 9:00 a.m.

15               Okay. Is there any discussion with the AGs about whether  
16               or not they are interested in joining this litigation at all?

17          **MR. WARREN:** Your Honor, I'm not aware of any  
18               discussions like that to date.

19               It's possible that those may have occurred from other  
20               plaintiffs' counsel. I can't speak on behalf of everyone. I  
21               can only speak on behalf of really myself, but I'm not  
22               personally aware of that.

23          **THE COURT:** Okay. Other plaintiffs' counsel,  
24               anybody? Any discussions?

25               Mr. Seeger?

1 (No response)

2 **THE COURT:** No, I can't see. You're very tall.

3 **MR. WARREN:** Sorry, Your Honor.

4 **MS. HAZAM:** None that we're aware of on behalf of my  
5 firm, Lief Cabraser.

6 **MR. SEEGER:** None here on behalf of Seeger Weiss,  
7 Your Honor.

8 **THE COURT:** All right.

9 Okay. You wanted to say something else, Mr. Warren.

10 **MR. WARREN:** No, actually, Your Honor, it's been  
11 mooted by something you already said.

12 **THE COURT:** Okay.

13 All right. So what else is there with respect to  
14 discovery?

15 **MR. WARREN:** Your Honor, I think that is it at the  
16 present time. There may be other issues that we would -- you  
17 know, could profitably meet and confer with defendants about,  
18 but none of those would be ripe.

19 **THE COURT:** Okay.

20 Let's see. Then anything else you all want to discuss on  
21 the MDL?

22 **MR. WARREN:** Not from plaintiffs' side, Your Honor.

23 **MS. JONES:** Your Honor, I just want to put something  
24 on the radar for future discussion. One of the items in the  
25 proposed agenda that we submitted to the Court is number 3,

1 docket control measures.

2 And it's -- what we had contemplated, and we'll want to  
3 talk to plaintiffs' counsel about this more, is something very  
4 much -- perhaps very much in line with what you described  
5 earlier in terms of just diligence around the cases to ensure  
6 that you don't have a situation that sometimes does play out  
7 in these types of larger MDLs where cases kind of flood in  
8 without sufficient gating mechanisms in place.

9 I think the only addendum that we might flag for Your  
10 Honor's consideration to what you've said earlier is that it  
11 may well be something that the Court would want to consider  
12 implementing sooner than after the motion to dismiss is -- is  
13 resolved, in part because once you have a direct filing order  
14 put in place in these types of cases, you sometimes see an  
15 influx in -- in cases that are filed.

16 And so if the parties and the Court want to be focused on  
17 that issue, we'd probably want to start talking about it  
18 sooner rather than later.

19 **THE COURT:** Okay. So -- so talk.

20 **MS. JONES:** Well, that -- we have not yet had a  
21 chance to meet and confer with the plaintiffs on it. We just  
22 wanted to put that on the radar for something we'll want to  
23 talk about going forward.

24 **THE COURT:** Okay. That's fine.

25 I -- I assumed that some of the issues that we talked

1 about today were actually what you intended under Section 3,  
2 but if there are other issues, then feel free to identify  
3 them.

4 **MS. JONES:** I think from the defense's perspective,  
5 we have -- we have covered everything on our agenda.

6 I'm getting head nods from the table so I think we're  
7 good.

8 **THE COURT:** Okay.

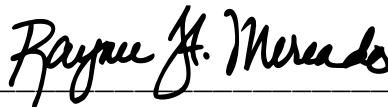
9 **MR. WARREN:** Thank you, Your Honor. Nothing further  
10 from the plaintiffs.

11 (Proceedings were concluded at 9:53 A.M.)

12 --o0o--

13  
14 **CERTIFICATE OF REPORTER**

15  
16 I certify that the foregoing is a correct transcript  
17 from the record of proceedings in the above-entitled matter.  
18 I further certify that I am neither counsel for, related to,  
19 nor employed by any of the parties to the action in which this  
20 hearing was taken, and further that I am not financially nor  
21 otherwise interested in the outcome of the action.

22  
23 

24 Raynee H. Mercado, CSR, RMR, CRR, FCRR, CCRR

25 Thursday, December 15, 2022